

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 08-20499

PETER LUKASAVITZ,

Defendant.

OPINION AND ORDER DENYING MOTION FOR CERTIFICATE OF APPEALABILITY

On April 19, 2013, the court issued an “Opinion and Order Denying Defendant’s 28 U.S.C. § 2255 Motion.” Lukasavitz now asks the court to issue a certificate appealability (“COA”) on all of the claims raised in his § 2255 motion.

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a COA is issued under 28 U.S.C. § 2253. A COA may be issued “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The substantial showing threshold is satisfied when a petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Lukasavitz argues that because many courts have criticized the guidelines sentencing range for child pornography offenses, and imposed sentences below the applicable guidelines range, this demonstrates that reasonable jurists can disagree

regarding the constitutionality of Lukasavitz's sentence, thereby necessitating the issuance of a COA.

However, Lukasavitz ignores the fact that the United States Probation Department recommended a guidelines-range calculation of 210–240 months' imprisonment. After the government moved for a reduction in Lukasavitz's sentence, the court sentenced him to 180 months' imprisonment—30 months below the low-end of the applicable guidelines range. Further, Lukasavitz accepted a favorable plea agreement, thereby waiving his right to a direct appeal questioning his attorney's representation. As the court noted at Lukasavitz's sentencing hearing, this may have been a sound strategic decision:

[I]t's perhaps strategically wise for a defendant to enter a plea of guilty, rather than contesting these matters and exposing his behavior in full bloom to the judge who ultimately may be responsible for sentencing him.

(Pg. ID 139.) The court does not find that reasonable jurists would find the court's assessment of Lukasavitz's claims debatable or wrong. Accordingly,

IT IS ORDERED that Lukasavitz's "Motion for Certificate of Appelability" [Dkt. # 46] is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: December 24, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, December 24, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522